COLONEL THOMAS DONGAN
GOVERNOR OF NEW YORK, 1682, AFTERWARDS EARL OF LIMERICK

SOME LEGAL AND POLITICAL ASPECTS OF THE MANORS IN NEW YORK

ADDRESS DELIVERED AT THE ANNUAL MEETING OF THE NEW YORK BRANCH

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THE ORDER OF COLONIAL LORDS OF MANORS IN AMERICA

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A lawyer of my acquaintance once remarked rather gibingly to me that the trouble with history was that it was nine-tenths interpretation. Since in respect to this malady the law is in no better case, I suppose that the discussion of any legal-historical problem gives promise of being all sauce and no pudding. Such a state of affairs would be, indeed, distressing for history as well as law or cookery needs the solid substructure of fact to give reality to interpretation. Equally important for the gustability of these facts, if I may pursue my culinary figure, is not only the observance of the proper proportions between sauce and pudding, interpretation and facts, but likewise the spice of some variety in method and approach. To my mind the failure to observe these principles has too often caused history to be without flavor. Interpretation frequently transcends the facts upon which it must rely, or it has adhered with wearisome monotony to the same expository recipes. In respect to our early colonial institutions this penchant for an exaggerated interpretation or for the adherence to preconceptions has been especially noticeable. Due in part to the paucity of records, and in part to the ideas of certain dominating personalities among historiographers the story of our colonial beginnings has been told either for the purpose of showing how important these beginnings were for the future trend of our political thought and institutions, or of establishing the existence of a strong and self-nourishing independence of mind and originality of invention combining from the first to create a distinctive national culture.

Both of these points of view are essentially the result of our national egotism which is intolerant of the notion that American civilization was a mere transplantation from Europe of institutions and customs which assumed new forms only after the

passage of decades. This way of regarding the growth of American institutions as a mere continuation in a new environment of older European institutions draws us to the past rather than to the future, yet such an approach to the interpretation of colonial civilization seems to me not unpromising, particularly where we must consider those transplantations which were not sufficiently vigorous to withstand the processes of adaptation in the New World. In any event it is thus that I propose to consider the manors of New York.

The substitution and eventual absorption of English in the place of Dutch institutions in New York during the last decades of the seventeenth century can be understood only if we take into account two circumstances, first, that the province had been conquered by force of arms, and secondly, that the whole scheme of government and administration introduced by the conquerors was planned and carried out by the Stuart kings, whose philosophy of the state and the functions of the crown was exceedingly reactionary. Imagine, if you will, a return of the Hohenzollern dynasty to Germany after a dozen years of the present republican regime in that country, and I think you will be able to visualize the situation in England after 1660. The Stuarts were forever looking back, regretting the good old days of their grandfather James I, bent upon the preservation of all the medieval traditions which tended to exalt the crown above the other departments of the government. At home conditions did not favor the realization of their dreams, but it was otherwise in New York.

The New England colonies had been settled during a period when ideas opposed to those of the Stuarts were on the rise, and as these principles of the American Puritans had been carried over to the flourishing English settlements on Long Island, we may be prepared to see, once the province was conquered, a contest between the conceptions of self government advocated by the earlier English settlers, and the reactionary ideas of government imposed from above in the true Stuart manner.

We must not forget, however, if the course of the Stuart governors strikes us as opposed to the vaunted political liberalism of the New England colonies, that the situation with which they had to deal was not simply one of settling a backwoods with a homogeneous population, but of administering a territory wrested from an enemy and peopled largely with the sub-

jects of the latter. Furthermore, the exercise by the crown of an unlimited discretion in the government of a conquered people had long been recognized by the English courts.[1] This doctrine had been set forth with great precision during the reign of James I by that celebrated judge, Sir Edward Coke, and it was consequently an undisputed principle of law that where a country was conquered the laws of the conquered people remained in force until the King should alter them. In other words it was part of the royal prerogative to legislate for conquered territory and needless to say this prerogative was not subject to parliamentary control.

It is obvious that the crown being vested in law with so substantial a power over conquered New Netherlands, and the King and his brother the Duke of York being minded as they were, the administration of the province and the institutions erected for that purpose would tend to carry out so far as feasible the royal preconceptions of what a government should be, particularly as all the precedents relating to conquered lands that would normally be consulted in affecting governmental arrangements, dated from the remote days of English military supremacy when the royal power had been, indeed, very great.

I do not wish you to get the impression that New York was singled out particularly for the imposition of essentially medieval institutions. Up to this time the English government had conceived of its relations to its territories overseas as entirely feudal.[2] There are constant reminders of this attitude in the patents and charters, in the land tenure and in the political relations between the mother country and the colonies. From the very inception of English colonization the notion of the crown lawyers seems to have been that the settlements were to be fashioned upon the model of the old counties palatine in England and particularly the County Palatine of Durham which was in reality a quasi-independent state and was believed to have been organized as such because it was a military bulwark against the ferocious Scots.[3] Similarly the County Palatine of

[1] *Calvin's Case*, 7 *Coke's Reports* 17. See also the writer's *Struggle for the Falkland Islands* (1927), c. 2.

[2] Osgood, *The American Colonies in the Seventeenth Century*, vol. 3, p. 15, vol. 2, p. 5 *et seq.*

[3] Lapsley, *The County Palatine of Durham* (1907), p. 12 *et seq.*, denies the correctness of this view, but for our purposes the circumstance that this view was held in the 17th century is the factor of importance. Cf. Coke, *Fourth Institute*, c. 38; Selden, *Titles of Honour*, c. 5, § 8.

Chester had served as a barrier against the equally warlike Welshmen.[4] The privileges which the counts palatine exercised included nearly all the important royal powers with the one notable exception of legislation, and when the patents for the first colonial enterprises were drawn up these veritable islands of independent jurisdiction were the most likely models for the draughtsmen of the colonial charters. Indeed, in at least three charters an express statement was made that the proprietor should enjoy all the privileges and rights as the Bishop of Durham had in his county palatine.[5]

While these counties palatine had, by the seventeenth century, been greatly shorn of their original powers, there was a good deal of learning in the books about them, and since lawyers as a class are temperamentally hampered in making new inventions, it was natural that the palatinates in their heyday should furnish them with inspiration. In any event the Duke of York was given by his patent substantially regal powers,[6] powers similar to but far exceeding those which the Lords Palatine or even the King in England himself enjoyed; and the way in which these were at first executed indicates that the ancient medieval practices in respect to conquered territory had been duly considered.

This attitude was by no means unreasonable, for you must not forget that while the actual reduction of New Amsterdam partook somewhat of the pseudo-comedy of certain Latin-American revolutions, it was none the less a military success against one of the leading military powers of Europe of whose reprisals Colonel Nicolls, the English commander, stood in constant dread.[7] Remember, also, that the province was swarming with brave and warlike Indians, utterly unlike the moth-eaten tribes with whom the Plymouth settlers had come in contact, of whose prowess the English were well informed, and that to the north lay the outposts of French colonial empire with which a collision was very decidedly to be anticipated. And finally do not overlook the fact that within the province and about

[4] Lapsley, *op. cit.*, p. 12.

[5] Osgood, *op. cit.*, vol. 2, p. 5.

[6] The patent is in *The Colonial Laws of New York* (1894), vol. 1, p. 1. Grants where palatine powers were expressly conveyed were those of Maryland. (Hazard, *State Papers*, vol. 1, p. 329), Maine (*Ibid.*, p. 444), Carolina (*North Carolina Colonial Records*, vol. 1, pp. 22, 103).)

[7] *Documents Relating to the Colonial History of The State of New York*, vol. 3, pp. 104, 114, 137, dispatches of Colonel Nicolls.

its eastern borders were settled fellow-countrymen of whose disaffection and republican tendencies the crown was justly suspicious.[8] With these considerations in mind I think we can appreciate fully the practical reasons for the extension to New York of institutions that had in the remote past proved successful as a means of building up a faction devoted to the government.

And now after this very lengthy preface I think you will agree that it is time to get to our manors. I shall not inflict upon you a tedious account of the growth of this interesting institution as it existed in the middle ages because contrary to the view taken by so many writers I think it is entirely immaterial for the understanding of the American manors to know how the English manor came about and how it developed. We are concerned only with the manor as it was in the seventeenth century, how far ancient traditions and customs regarding it had persisted and how men of the day actually regarded it, because when you are dealing with the transplantation of an institution you need only know what the transplanters probably thought about it; and I think you will agree with me that a tough old campaigner like Colonel Nicolls never bothered his head about the state of historical research in regard to manors. But when Thomas Pell, and David Gardiner and Governor Winthrop came to him with claims to certain lands, Nicolls, who desired to attach to his master's cause men of substance not infected with the democratic virus, cast about for a means to effect this result. Doubtless he recalled the fact that in England the lord of a manor was attached by certain bonds of fealty and finance to some greater lord or to the king himself, and so he drew up what was a most ingenious grant, but which I can assure you would have made a contemporary conveyancer writhe, and his purpose was accomplished.

Nicolls was profoundly concerned with putting into effect a satisfactory administration to supplant the Dutch system, to assure military defence and a strongly centralized government.

[8] Because of these suspicions a royal commission had been named consisting of Colonel Nicolls. Samuel Maverick, George Cartwright, and Sir Robert Carr to investigate the complaint made against the New Englanders regarding their loyalty. There are documents regarding this commission's work in *Documents Relating to the Colonial History of the State of New York*, and in *New York Historical Society Collections* (Publication and Fund Series, 1869), vol. 2. There is a narrative of its activities in Osgood, *op. cit.*, vol. 3, p. 171 *et seq.*

He had, withal, an acute political sense, for he showed himself willing to adapt to his purpose anything which would achieve it. Now, the English manor was a device of government which naturally appealed to him.[9] At home it was still an active political and administrative unit as well as an economic institution, and was still fulfilling its ancient function of a local police and petty civil jurisdiction, although as we shall soon see, it had lost all significance in relation to public defense.[10] The manor's function as a unit of local government was exercised through the manorial courts, the court leet[11] which was the ordinance making body and presented offenders against the local regulations, and the court baron[12] where were tried the civil actions between tenants and matters relating to land tenure were handled.

That Nicolls should have considered the manor almost exclusively from this angle of its judicial and administrative function, was to be expected, for it was this aspect of the manor which had chiefly concerned the writers of the period. I should like to read you a part of the definition of a manor given by John Cowell[13] whose law dictionary was a standard work during the seventeenth century. He states, that the manor "is a nobler sort of fee granted partly to tenants for certain services to be performed and partly reserved to the use of his (the lord's family) with jurisdiction over his tenants for their farms. The whole fee was termed of old, a Barony, from whence the court that is always an appendant to the manor is called the Court Baron." As to the origin of the manor Cowell says that "in the beginning there was a circuit of ground granted by the king to some baron or man of worth for him and his heirs to dwell upon and to exercise some jurisdiction more or less within that

[9] For a discussion of the manor in early times cf. Pollock and Maitland, *History of English Law* (2 ed., 1911), vol. 1, p. 594 *et. seq.*

[10] For an account of the manor as a unit of local government in the seventeenth century cf. Webb, *English Local Governments—The Manor and the Borough* (1908), Part 1.

[11] On the functioning of the court leet, Hearnshaw, *Leet Jurisdiction in England* (1908); Ritson, *The Jurisdiction of the Court* Leet (1809); Kitchin, *Jurisdictions* (3 ed., 1656); *Select Pleas in Manorial and other Seignorial Courts* (Maitland ed., 1889), Introduction.

[12] In addition to the last two references above, cf. also Sheppard, *The Court-Keepers Guide* (1662); Wilkinson, *A Treatise Collected out of the Statutes of this Commonwealth* (1657), p. 209 *et seq.* There are many other similar guides.

[13] Cowell, *The Interpreter* (1672, ed.) *sub verb* "Manor" p. Vv.

compass as he thought good to grant, performing such services and paying such yearly rent for the same as he by his grant required. "In these days," continues Cowell, "a manor rather signifieth the jurisdiction and royalty incorporeal than the land or scite." And he adds "at this day a manor cannot be made because a court baron cannot now be made and a manor cannot be without a court baron."[14]

Although modern research has added extensively to the meagre historical accounts upon which Cowell relied, his words are a good summary of contemporary opinion regarding the manor, as a glance at the many works produced on the subject during and after the reign of Elizabeth will indicate. This opinion was expressed very vividly by John Norden[15] who inquires: "And is not every manor a little commonwealth whereof the tenants are the members, the land the the body and the Lord the head." Such records of the manor courts for the seventeenth century as are preserved, tend to establish the verity of the conception; for local life in rural England was relatively uncomplicated and self-contained in those old days when the devil's inventive genius had not yet encompassed the radio and the motor car.

We must pause here to consider briefly the statement that a court baron could no longer be created. The theory in respect to this court was that it had come into existence by prescription, that is to say it had being only by the unwritten sanction of time itself.[16] This looks very much as if the creation of manors even by royal patent were impossible for it was a maxim that the King himself could not effect what time alone could bring about. But an even greater obstacle existed in the shape of a very famous statute passed in the reign of Edward I[17] that forbade sub-infeudation, and while the king was not deemed to be bound by this statute, persons taking from the King's immediate grantee were, and as such persons could not by this statute create the feudal bond between themselves and their tenants, a manor after the year 1290 in England could not be created because at least one of the essentials—tenants owing

[14] It is worthy of notice that Cowell's definition is compounded from various works of the period.

[15] Norden, *The Surveiors Dialogue* (1618 ed.), First booke, p. 27.

[16] *Hill v. Grange*, Plowden 169; Kitchin, *op. cit.*, p. 7.

[17] Statute of Westminster III, 18 Edw. I., c. 1 (1290).

homage to the lord and suit to the court could not lawfully be constituted.[18]

I may say here that this was substantially the result reached by various learned judges who expressed the opinion in the year 1859, following the anti-rent agitation in New York, that this ancient statute of Edward I had always been in force in this state and that consequently the attempt to create feudal tenancies was void.[19] With all due respect to the high authority from which this opinion emanated, I am constrained to say that this conclusion was a mere matter of opinion not supported by a shred of evidence. In fact, every bit of evidence tends to support a diametrically opposite conclusion.

I do not wish to inflict on you the very tedious and intricate legal reasons for my statement. It is sufficient that I indicate to you once more that in America English statutes only applied where the colonists adopted them or where they were extended in terms by Parliament.[20] In a conquered land like New York the law was changed, according to English legal theory, at the will of the King, and consequently we must determine what Charles II thought he was doing from contemporary documents and not from the musings of judges two hundred years later.

Both from the grant to James, Duke of York and from what we know of the instructions to Colonel Nicolls it is obvious that Charles intended to convey the same powers as he himself

[18] Coke, *Complete Copyholder* (1668 ed.), § 31. A recent modern discussion of this statute is in the English case, *In re Holliday*, *Law Reports*, 2 *Chancery Div.* 698.

[19] This was the case of *Van Rensselaer v. Hays*, 19 N. Y. 68. Cf. also *People v. Van Rensselaer* 9 N. Y. 291. The litigation over the tenancies in the Hudson Valley was bitterly fought. An account of the agitation is in Cheyney, *Anti-Rent Agitation in the State of New York 1839–1846* (1887). The legal aspects of the matter are discussed in Fowler, *History of the Law of Real Property in New York* (1895), p. 29 *et seq.* The present writer disagrees in almost every particular with Fowler's conclusions. As Fowler's sources were drawn almost entirely from the law reports, his conclusions were naturally unsatisfactory. Cf. also Brigham and Colvin, *A Treatise on Rents, Covenants and Conditions* (1857), c. 1.

[20] Cf. the memorandum of a privy council decision in 2 *Peer Williams* 75. This decision was of a later date than the period discussed, when if anything the practice was pursued of not interfering seriously with the colonists' power of legislation; cf. Schuyler, *Parliament and the Dominions*, in *Cambridge Law Journal*, vol. 3, p. 225. Eighteenth century practice in New York Province, accorded with the statement in the text; cf. the citation of authority in *M'Cullogh v. Murphy* entered in *Ms. Minutes of the Mayors Court of New York City*, 1739–1734.

possessed, reserving only a quit rent and the right of hearing cases on appeal. As the Duke was given the power to make such laws as he saw fit as nearly conformable to the laws of England as circumstances made feasible, it is absurd to assume that English statutes or even English judicial decision were binding of their own vigor; consequently so far as English law restricted the creation of manors it was for the Duke to decide if this was a suitable rule to introduce into his province. The fact that James through his lieutenants saw fit to create manors, negatives any presumption that he intended to put into effect a restrictive statute; hence, I believe we may justly conclude that at the time no legal impediment to the creation of manors was believed to exist, and certainly no one was in a position to challenge this action. I may add that the celebrated statute of 1660[21] which wiped out so many of the remaining incidents of feudal tenure in England reducing them to a single type—that of free and common socage, the tenure by which New York itself was granted to James—left this particular question unaffected.

We may now turn once more to the doughty Colonel Nicolls, assured that in the creation of manors he was neither violating his instructions nor acting in contempt of any statutes. In all he created three manors and confirmed what was substantially a third. These creations were the Pell manor in Westchester,[22] the Sylvester manor on Shelter Island,[23] the Winthrop manor on Fishers Island.[24] and the confirmation was of the extensive privileges of Gardiner[25] on the island of that name.[26]

The situation of the lands which were constituted manors furnishes us with a partial explanation of Nicolls' motives for preferring this particular form of local government to the New

[21] Statute 12 Car. II (1660), c. 24.

[22] The terms of this grant are recited in the later Pell patent of 1687, printed in Scharf, *History of Westchester County* (1886), vol. 1, p. 156.

[23] This patent was a "confirmation" but was really more than that as a manor had not hitherto existed. It is printed in Mallman, *Historical Papers on Shelter Island* (1899), pp. 27–28.

[24] This patent is also styled a "confirmation." It is printed in Woolsey, *The Winthrop Manor of Fisher's Island* (1927), pp. 24–25.

[25] The original Gardiner grant from the Earl of Stirling is in *Documentary History of the State of New York* (Folio ed. 1850), vol. 1, p. 463. Cf. Brodhead, *History of the State of New York* (1 ed., 1879), vol. 2, p. 90.

[26] Note that before a patent was issued Shelter Island had been given an independent status as an "island;" cf. New York State Library Bulletin, no. 2, p. 157, "*General Entries*," 1664–1665.

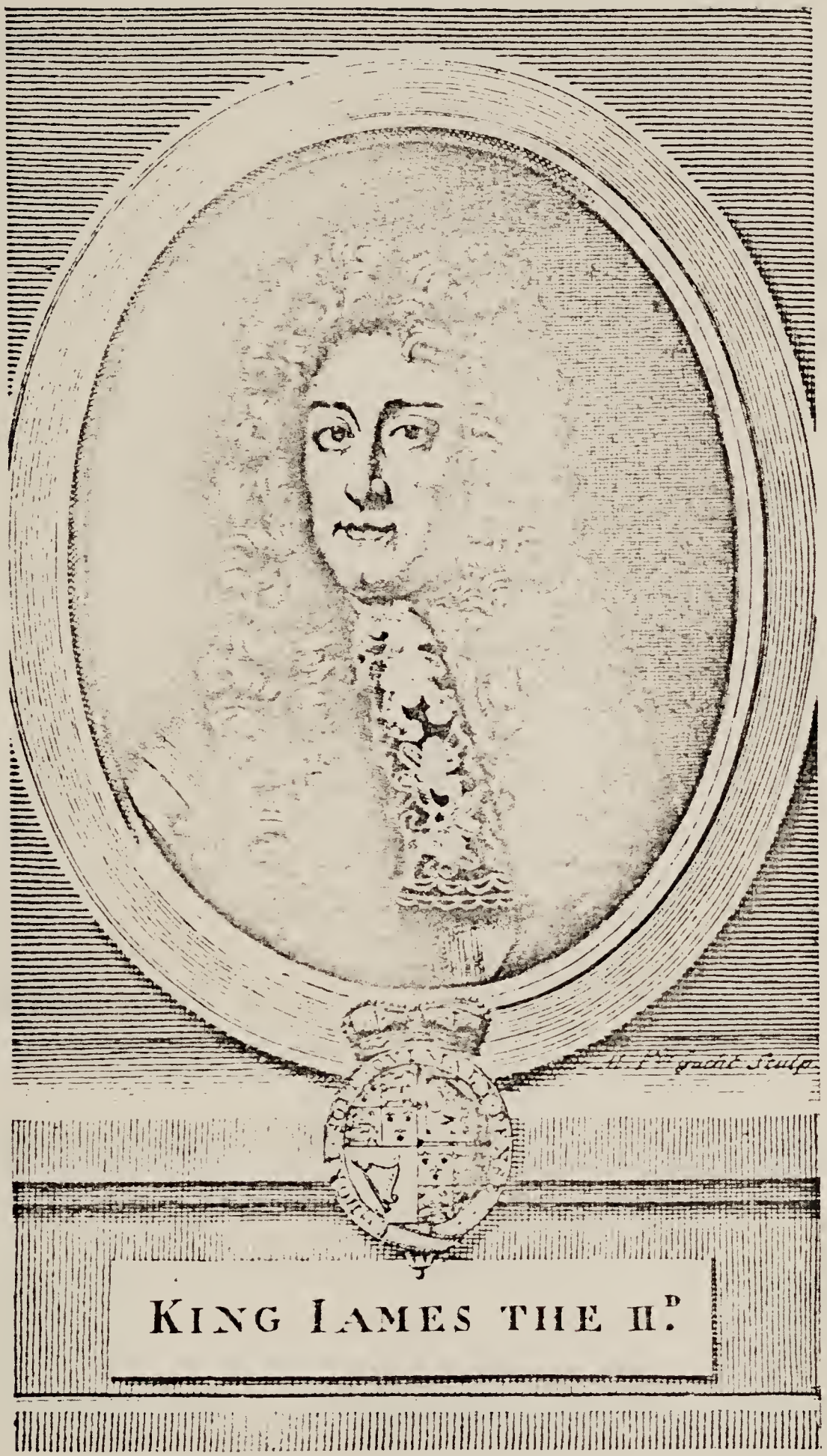
England form which was in use among the colonists on Long Island. All three of the islands which were made manors were not readily accessible from the shore. They occupied strategic points from a military point of view, for as we know from Nicolls' reports to the Duke, his master, it was at the end of Long Island that he most feared an attack by the Dutch. Furthermore, the Eastern end of Long Island was the center of the most acute opposition to the quasi-military government instituted by Nicolls, and prudence dictated the necessity of some organization independent of the republican influences which were rife there and that would be devoted to the interests of the Duke. In the case of Fishers Island we have probably the predominant motive of rewarding Governor Winthrop for his services, but the reasons just mentioned undoubtedly lay behind the grant to Sylvester and the confirmation of Gardiner's previous patent from the Earl of Sterling. I am moved to this view by the fact that these grants were made at a time when the unrest on Long Island was at its height and the disgruntled inhabitants were seeking a reunion with Connecticut.[27]

In the same year (1666) the holdings of Thomas Pell in Westchester were constituted a manor, and while there is no evidence of similar discontent in Westchester county, the Pell holdings abutted the Connecticut border and may have been intended as a sort of bulwark of defense in the event the Connecticut colonists should fall in with the plans of the Long Islanders. Moreover, Pell had settled a town of Englishmen in the midst of Dutchmen[28] and the grant gave these Englishmen within the domain of Pell a government in which the neighboring Dutch had no share.

This analysis of Nicolls' motives in creating manors is strongly supported by the language of the grants themselves. The holdings of the various grantees were constituted "an entire enfranchised township and manor and place" in no way subordinate to the jurisdiction of any governmental organ except the governor and his council. In other words, Nicolls was setting up a form of local government independent of, and in opposition to the New England type which for political reasons he had left undisturbed on Long Island. The objective of military security was obtained by simultaneously constituting

[27] Brodhead, *op cit.* pp. 107–108.

[28] The Clarendon Papers, p. 12, in *New York Historical Society Collections* (1869), vol. 2.



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the manor a township.[29] The significance of this move we may determine by consulting the Duke's Laws, the code which had been enacted in the spring of the year 1665. By the terms of this code[30] the system of colonial defense had been built upon the theory that the town was primarily responsible for the maintenance and training of the militia, indeed, the most explicit enactments in the whole code related to this subject of military affairs. In constituting the holdings of Pell, Winthrop and the others townships as well as manors, the same military burdens were placed upon the manors as the towns had to bear.[31] Under the statute of Charles II which had abolished military tenures such an obligation could not have arisen out of any mere tenurial arrangements; but this objective was accomplished indirectly by Nicolls in thus deftly placing upon the manor the military obligations of the towns.

Whether or not any of the Lords of manors created by Nicolls ever performed the duties which were laid upon them, I cannot say although we know that the Livingstons, whose manor was created later, long maintained a military company.[32] We may be sure, however, that the privileges granted them were made use of. With no intent to embarrass my friend Mr. Pell with references to the peccadilloes of his ancestors, I may mention the fact that there is still extant a petition of the year 1684 of Francis Romboult, later mayor of New York, to the Governor of the province asking for relief against John Pell because Pell's patent, rendering him free of all jurisdiction except that of the Governor, had enabled him to evade the payment of certain debts claimed by Romboult.[33]

[29] The consociation of the township with manor appears to have been suggested by the New England township organization that already was in existence on Long Island, although at this time in some places in England the township was an administrative unit; Webb, *The Parish and the County* (1906), p. 10. Cf. also Webb, *The Manor and the Borough*, pt. 2, p. 587 note; Pollock and Maitland, *History of English Law*, vol. 1, p. 605, as to the historical relation of manor and township; Adams, *The Germanic Origin of New England Towns* in *Johns Hopkins University Studies*, vol. 1.

[30] *The Colonial Laws of New York*, vol. p. 49.

[31] Except the Sylvester Manor. The Sylvesters by paying a lump sum of £150 secured exemption from all but voluntary military service, Mallman, *op. cit.*, p. 27 for the document giving exemption. The fact that such an exemption was purchasable adds force to the interpretation suggested in the text.

[32] *Documentary History of the State of New York*, vol. 3, p. 421.

[33] *New York Colonial MSS.*, vol. 32.

The same considerations which had moved Nicolls to create the manors just spoken of, led him still earlier to confirm the privileges of Van Rensselaer whose manor was the last outpost of European civilization in the lands of the savages.[34] This confirmation was contingent upon the patroon securing from the Duke a new patent, which was eventually issued, and the only substantial diminution of rights suffered by Van Rensselaer at this time was the merging of his court with that of Fort Orange.[35]

During the regime of Governor Lovelace four new manors were added to those established by his predecessor. These were the Tisbury manor on Martha's Vineyard,[36] the Sophy manor on Prudence Island,[37] the Fordham manor in Westchester[38] and the Foxhall manor near Kingston.[39] The form of patent in all these cases followed closely the model used by Nicolls, and I think that the grants were all similarly motivated. Thus, the two island manors were created because they were remotely situated from the seat of government at Manhattan, and reasons of governmental expediency as well as of defense made it desirable that the grants take a form which insured a nominal adherence to the Duke with a minimum of difficulty. In the case of the two manors on the mainland, the grantees had in each case established towns in the midst of Dutch settlements and for administrative as well as military considerations it was expedient to institute the independent manor-township form of local government.

It is interesting that for some years after the province surrendered by the Dutch in 1674, following its reconquest, no effort was made to grant new manors. The practice was not resumed until the arrival of Governor Dongan in 1683, at which time, the Duke of York began to evince an interest in

[34] *General Entries* (In N. Y. State Lib. Bulletin No. 2), p. 119.

[35] *Minutes of the Court of Fort Orange and Beverwyck* (Van Laer Ed., 1920), vol. 2, p. 9; cf. also Nicoll's letter to Van Rensselaer, in *Documents Relating to the Colonial History of New York*, vol. 3, p. 143.

[36] The patent is in Wightman, *The Mayhew Manor of Tisbury* (1921), p. 31; cf. also Nicoll's letter in *Documents Relating to the Colonial History of New York*, vol. 3, pp. 169–170.

[37] Livingston, *The Minor Manors of New York* (1923), pp. 7–9. Cf. also *Colonial MSS.*, vol. 22, p. 138 *et seq.*

[38] Scharf, *op. cit.*, vol. 1, p. 159, for patent.

[39] Livingston, *op. cit.*, p. 14 for the patent.

securing a greater financial return from his province, and particularly in the exaction and collection of quit rents.[40]

There is no better evidence of the feudal nature of land tenure in New York Province than the existence of this type of revenue. The quit rent was a feudal due originating from the commutation into a fixed money equivalent of the food and labor dues which in England had been exacted by the lord of the manor of his tenants or it might be a fixed payment in kind.[41] The right to reserve quit rents was expressly conveyed in the Duke of York's charters, so that when the province failed to show a good return James naturally desired that the lands should be charged with such rents and that the patentees should pay them.

Although the Duke's Laws had required the reservation of a quit rent for future patents,[42] the Dutch grants had been confirmed on their original terms, and thus future payments from this source were waived. As a result land tenure in New York fell into two classes, the lands on which a payment was reserved and those on which it was not.[43] This distinction made no trouble until the effort was made to enforce the Duke's laws.

This policy of enforcement was begun under Governor Dongan. He was given a discretionary power in fixing the amount of rent,[44] the instructions stipulating only that these should be moderate, and Dongan seems to have been easy going. He called in all patents to be scrutinized for the purpose of determining what tenurial obligations existed. New patents were issued and of course Dongan obtained a fee for this service, since these fees were a part of his gubernatorial perquisites. He was later accused of having extorted exorbitant fees, the implication being that the greater his personal return the less the quit rent for the Duke.[45] There may, of course, have been some truth in these charges, but they were never proved. As a matter of fact Dongan did somewhat better than his prede-

[40] See the instructions to Dongan in *Documents Relating to the Colonial History of New York*, vol. 3, pp. 333, 351, 381.

[41] Bond, *The Quit-Rent System in the American Colonies* (1919), p. 25, Tawney, *The Agrarian Problem of the Sixteenth Century* (1912), p. 211.

[42] *Colonial Laws of New York*, pp. 44 and 81. The amount was fixed in an amendment of October, 1665.

[43] Bond, *op. cit.*, p. 111.

[44] *Documents Relating to the Colonial History of New York*, vol. 3, pp. 333 and 381.

[45] *Ibid.*, p. 493 *et seq.*

cessors in the matter of quit rents. He adopted the scheme of buying up land from the Indians adjoining those of patentees, who would then bring in their grants for revision rather than have these new lands fall into the hands of others.[46] Whether or not manor privileges were held out as a bait for confirmation with a higher quit rent, I cannot say. In any event the Lloyd holdings were converted into a manor with a quit rent of four bushels of winter wheat, whereas previously the lands had been free.[47] Pell's grant was confirmed with a twenty shilling quit rent in lieu of the previous rent of a lamb.[48] The enormous Livingston holdings were granted at an annual quit rent of twenty-eight shillings,[49] what seems an absurd amount; but when we consider the fact that the land was almost wholly untilled it is not so grossly inadequate.

It was not alone for financial reasons that new manors were created. Even more persuasive is the circumstance that all of the manorial patents were granted to persons of great substance and importance in the colony. The grants to such men as Livingston, Stephen Van Cortlandt,[50] Colonel William Smith[51] and Colonel Heathcote,[52], made by Dongan and his successors, indicates that a conscious effort was being made to create a land aristocracy devoted to the crown and its governor, that would offset the republican tendencies among the people, so deplored by all the governors.[53] Even the two manors on Staten Island, the grant of which the official correspondence shows to have been made primarily to prevent the island from falling into the hands of New Jersey, were given to men deep in the councils of state.[54]

[46] *Ibid.*, p. 401.

[47] *Huntington Town Records* (Street ed., 1887), vol. 1, p. 419 *et seq.*

[48] Scharf, *op. cit.*, vol. 1, p. 156.

[49] *Documentary History of the State of New York*, vol. 3, p. 343 for the first patent; the confirmatory patent of Governor Hunter, p. 1414; a list of the quit rent payments on p. 498.

[50] Patent in Scharf, *op. cit.*, vol. 1, p. 116; cf. also Lawton, *The Van Cortlandt Manor* (1920).

[51] A summary of the patent is in Duffield, *The Tangier Smith Manor of St. George* (1921), p. 138.

[52] Patent in Scharf, *op. cit.*, vol. 1, p. 141; cf. also Wheeler, *The Heathcote Manor of Scarsdale* (1923).

[53] Of a similar purport were the grants to such persons as Morris and Philipse, cf. Hall, *The Manor of Philipsborough* (1820); Akerly, *The Morris Manor* (1916).

[54] *Documents Relating to the Colonial History of New York*, vol. 3, pp. 350, 356.

More interesting even that the political aspects of the manor grants of Dongan and his successors are the forms of these grants and their legal implications. We are no longer dealing with the Jovian though somewhat vague expressions of the Nicolls and Lovelace patents, but with the clear and expert phraseology of the professional conveyance. Indeed, the terms of these instruments suggests that Dongan had been supplied with a form or that the Attorney General, James Graham, was familiar with how such grants should be made. Despite the fact that no new manors could be erected in England, during the reign of Charles I many manors had been created in Ireland under royal commission,[55] in terms similar to those by which the New York manors were granted by Dongan, and one is naturally led to suppose that the Irish patents served as models for the manors in the New World.[56]

In any event, the grants establishing the manors enumerated with great precision the rights and privileges of the grantees not the least important of which was the explicit grant of the right to hold a court baron and a court leet, the civil and criminal court respectively of the manor. A consideration of this aspect of the New York manor system will form the concluding part of this paper.

You are all aware of the fact that while the court baron was deemed essential to a manor, the court leet was not, and that the right to hold the latter was dependent upon a separate franchise.[57] In other words, a grant of a manor implied the right to hold a court baron, but the right to hold a court leet must be given in terms. In the Irish patents, of which I just spoke, the right to hold both courts was expressly granted, and so far as I know the same was true of the New York patents with the sole exception of the Lloyd grant where the court leet alone was specified.

However important theoretically these distinctions may seem to us, such evidence as still exists regarding the actual operation of manor courts in seventeenth century England indicates that in a great many manors no distinction was drawn between

[55] *Delacherois v. Delacherois*, 11 *House of Lords Cases* 62; cf. also, *The Case of Tenures upon the Commission of Defective Titles* in Mollyneux, *The Case of Ireland's being Bound by Acts of Parliament in England* (1720).

[56] On the importance of Ireland in this connection of the letter of Charles I to the Lords Justices of 24 July, 1632, in Strafford, *Letters and Dispatches*, vol. I, pp. 218–219.

[57] Coke, *Complete Copyholder*, Sec. 31.

these two courts in practice. Periodically a single court known as the Lord's Court was held where was transacted both the civil and criminal business of the manor and the necessary administrative regulations were made.[58]

How far the right to hold manor courts in New York was actually exercised it is difficult to say in view of the absence of adequate records. Some writers have asserted that the patentees never availed themselves of their rights to hold courts,[59] but as I have seen the original of a notice of appeal from the manor court of Fordham in February, 1676 (o.s.), this assertion is obviously not correct.[60] It seems probable that courts were held in some of the manors created prior to the rebellion of Jacob Leisler, but that following the reorganization of the judiciary in 1691 such reasons as might still have justified the functioning of these courts disappeared entirely. In any case, the judicial jurisdiction of the manor could never have been a thriving institution because it appeared upon the scene too late to survive.

The primary cause for the demise of these rights is to be found in the fact that the English who settled Long Island and Westchester had come from New England bringing with them

[58] Webb, *The Manor and the Borough*, pt. 1, p. 64 *et seq.*

[59] I have examined practically every account of a New York manor and uniformly there has been wanting in these accounts any satisfactory evidence for or against the exercise of the franchise to hold a manorial court. Where an affirmative statement is made that such a court was held the evidence for the statement is not given or it turns out to be merely hearsay. Thus Street in *Huntington Town Records*, vol. 1, p. 424, anent the court on the Manor of Queens Village. Some writers have likewise a curious penchant for asserting that the court was held in the manor of which they happen to be writing, but not in other manors. Delancey, the presumable authority on the manors in New York (cf. his account in Scharf, *op. cit.*, vol. 1) fails to give anything definite on the matter. Fox, *Caleb Heathcote* (1926), p. 120, n. 29 reviews some of the authorities but he seems satisfied not to pursue the matter beyond the statement of a particular writer. As to the manor of Scarsdale, it is clear from Fox's text that he believes a court was never held there because he could find no evidence that it was held. While the evidence may not support an affirmative conclusion, it does not necessarily furnish support for a negative conclusion inasmuch as the court baron was not a court of record, and such a court may well have been held and the court leet franchise not exercised. Furthermore, the fact that copyhold tenure was not adopted may have had something to do with the failure to keep records, as this was one of the chief functions of the lord's court in England.

[60] *New York Colonial MSS.*, vol. 25, p. 79.

that typical creation of the puritans, the town court.[61] This court had no distinct English model, but seems to have been patterned with some modification upon the local borough or manorial courts in England through a selective process which rejected all but the popular features of its prototypes.

It is obvious that these courts, having been established on Long Island[62] long before Nicolls conquered New Netherlands and being fully in tune with the democratic proclivities of the inhabitants, were entirely sufficient to meet local needs. To transplant the manorial courts after the English system to exist side by side with these so closely similar institutions would be fatuous. Nicolls, accordingly though not favorable to the town courts permitted them to stand, for, as he reported to the Duke of York, the republican tendencies of the English in the province were so pronounced that they abominated the very name of justice of the peace,[63] an officer who in England was the direct appointee and agent of the crown. Hence the dual character of the manors created by him as both townships and manors left the form of court optional whether town court or court baron, and at the same time supplied him with an administrative head, the lord of the manor, who like the justice of the peace was directly responsible to the governor.

When the manors under Dongan were created the town court was still active and was not in fact superseded until 1691.[64] Furthermore, the courts of sessions and oyer and terminer in

[61] Maclear, *Early New England Towns* (1908), p. 44 *et seq.*

[62] A typical court of this kind was the Huntington Town Court, a record of whose proceedings is preserved in the *MS. Huntington Town Book*, vol. 1 (Huntington L. I. Town Hall). The Dutch government by an ordinance had given these towns a limited jurisdiction; cf. *Laws and Ordinances of New Netherlands*, 1638–1674 (1868), pp. 27, 43. The Long Island towns not recognizing Dutch authority also had such courts.

[63] Nicolls to the Earl of Clarendon, 7 April, 1666, in *New York Historical Society Collections*, vol. 2, p. 113, at p. 119 "ffor Democracy hath taken so deepe a Roote in these parts, that ye very name of a Justice of the Peace is an abomination."

[64] The Duke's Laws had provided for justices of the peace, and although they were given power to preside in town courts, they were primarily intended to sit in the courts of sessions, *Colonial Laws of New York*, vol. 1. pp. 43–44. In 1691 the local petty civil or criminal jurisdiction was given to the justices of the peace, *Colonial Laws of New York*, vol. 1, p. 226 *et seq.*

In 1683 the democratic character of the town courts was changed by a law which gave to commissioners the power to sit in them, *ibid.*, p. 125, but this was changed in the following year, and these officers were made elective, *ibid.*, p. 144.

each county were wholly adequate to rural needs in matters beyond the jurisdiction of the local courts. As the lords of manors usually were commissioned as justices there was certainly not enough business to keep them occupied in both capacities. Moreover, the tendency would be for the local town or county jurisdiction to absorb any manor business, where the manors were not exempted from such jurisdiction, and later for the Justice's court to do so, particularly as it was to the advantage of the individual exercising both powers of lord and county judge to act under the commission of peace from the governor rather than under his patent.

There are two further considerations of importance to be taken into account. These relate to the function of the lord's court as a machinery for keeping in order the land records, and secondly as a local ordinance-making body. Both of these functions were exceedingly important in England where a peculiar system of tenure known as copyhold tenure existed on the manors, requiring the court baron to be in session for transfers of possession, and where a great mass of purely local matters was left entirely to the manor government to regulate. In New York the case was otherwise. Copyhold tenure was never introduced, and the court baron was consequently unnecessary as far as the settlement of problems of tenancy were concerned. As to the enactment of ordinances regarding local affairs, the legislative traditions begun by Colonel Nicholls made this at first a matter which the central government controlled. The Duke's laws regulated in detail such matters as fencing, branding of cattle, and ringing of swine.[65] This was not unnatural, for conditions were very primitive and there was not very much to legislate about unless these matters were taken over by the provincial law-making body. Besides, this was a tradition that had been begun in New England and the codes of those colonies were followed closely in this respect by the draughtsman of the Duke's laws.[66] Later when the New York towns acquired a greater ordinance making power,[67] the time had passed when the manor courts, for reasons already

[65] *Ibid.*, p. 21 *et seq.*

[66] *New York Historical Society Collections*, vol. 2, p. 119.

[67] *Colonial Laws of New York*, vol. 1. p. 225. The original grant of powers to the town was contained in the Dukes Laws, *ibid.*, p. 63, but was restricted by regulations relating to fencing and highways.

indicated, were likely to function with any vigor.[68] In short, it was the New England town system introduced earlier which foiled all efforts to make the manor system a vital administrative unit.[69]

There are other interesting legal aspects of the manor system that deserve study, not the least important of which is its relation to the efforts to establish the Church of England[70] among a people predominantly aligned with the various reformed confessions. But the hour is late and I fear my theology is best not aired in these precincts. If I have spoken too long I must pray your indulgence, for the study of the institution whose memory your society perpetuates exercises a spell over the imagination inducing a pleasant but regretful nostalgia for those glamorous days when the manor was the symbol of an aristocratic tradition, and not a mere bait cast by facile baptisers of suburban developments.

[68] It is entirely possible that these manor courts did function but the absence of records is too striking a fact to be ignored in coming to any conclusion as to the actual exercise of this function.

[69] Reference should be here made to the French seignories on Lake Champlain. The documents are in *Documentary History of the State of New York*, vol. 1, p. 347 *et seq.*

[70] There is some discussion of this in Scharf, *op. cit.* p. 99.